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16 See Attachment A for additional counsel

17
18 UNITED STATES DISTRICT COURT
19
20 NORTHERN DISTRICT OF CALIFORNIA
21
22 OAKLAND DIVISION

23
24 DIGITAL IMPACT, INC., a Delaware
corporation,

Plaintiff,

vs.

BIGFOOT INTERACTIVE, INC., a Delaware
corporation,

Defendant.

25
26
27
28 RELATED CASES:
NO. C05 00636 SBA
NO. C05 00990 SBA

STIPULATION AND ORDER
CONTINUING CASE SCHEDULE

AND RELATED COUNTERCLAIM

1 DIGITAL IMPACT, INC., a Delaware
2 corporation,

3 Plaintiff,

4 vs.

5 YESMAIL, INC., a Delaware corporation,

6 Defendant.

7 AND RELATED COUNTERCLAIM

9
10 THE PARTIES HEREBY STIPULATE, by and through their respective counsel, to the
11 matters set forth below based on the following:

12 1. Pursuant to their earlier representations to this Court, the parties desire to utilize the
13 services of a magistrate judge in order to try to settle each of the two related cases before engaging
14 in discovery and incurring substantial litigation costs. On November 16, 2005, the Court assigned
15 the cases to Magistrate Judge Bernard Zimmerman for purposes of settlement. The assignment
16 order specified that Judge Zimmerman must complete his efforts on or before November 28, 2006.

17 2. Judge Zimmerman held a status conference with the parties on December 5, 2005.
18 During that conference, Judge Zimmerman explained that his approach to settling patent cases
19 requires several months and that this approach was within the parameters of the Court's assignment
20 order.

21 3. The parties' desire is to have Judge Zimmerman try his approach. His approach
22 conflicts, however, with the current Case Management Order, which sets deadlines for the case
23 beginning on December 16, 2005.

24 WHEREFORE, the parties stipulate to the following:

25 1. Pending the parties' attempt to settle the case, discovery in both related cases shall
26 be stayed. If resolution of either case is not successful, the court will then conduct a limited "mini-
27 Markman" proceeding in accordance with the rest of this order. At that time, limited discovery
28 may be conducted solely as to the issues presented in that proceeding without prejudice to

STIPULATION AND ORDER CONTINUING CASE SCHEDULE
Case Nos. C 05-00636 SBA and C-05-00990 SBA

1 subsequent discovery on all relevant issues if the case is not resolved by the mini-Markman
 2 proceeding.

3 2. The Court will hold a "mini-Markman" hearing on October 30, 2006, at 9:00 a.m.
 4 concurrently in both related cases. The purpose of the "mini-Markman" hearing will be to construe
 5 the patent-at-issue, U.S. Patent No. 6,449,634, with respect to the sole issue of whether the patent's
 6 claims require steps from independent parties.

7 3. The schedule of submissions prior to that hearing is set forth below:

<u>Deadline</u>	<u>Activity</u>
June 16, 2006	Exchange of Proposed Terms and Claim Elements for Construction (Pat. L.R. 4-1). The parties are to limit the terms to be construed to no more than six terms.
June 23, 2006	Exchange of Preliminary Claim Constructions and Extrinsic Evidence (Pat. L.R. 4-2).
July 14, 2006	Joint Claim Construction and Prehearing Statement (Pat. L.R. 4-3).
August 14, 2006	Claim Construction Discovery closes.
August 28, 2006	Bigfoot and Yesmail file their "mini-Markman" briefs.
September 11, 2006	Digital Impact files its opposition papers.
September 18, 2006	Bigfoot and Yesmail file their reply papers.
October 30, 2006	Mini-Markman hearing

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 26 3. The parties anticipate that discovery in this case will require the disclosure of
 27 substantial amounts of confidential, proprietary and other commercially sensitive information, and
 28 therefore will seek the entry of a mutually agreeable protective order in each related case. All other

1 proceedings and disclosures will be deferred until after the Court issues its mini-Markman order. If
2 that order does not dispose of the case, the parties may propound discovery on any of the remaining
3 issues in the case without further leave of Court.

4. After issuing its mini-Markman order, the court shall, if necessary, set a date for a
5 further case management conference for the purpose of scheduling dates for the balance of the
6 case.

7 DATED: December 14, 2005

8 TOMLINSON ZISKO LLP

9 BY /s/ Thomas E. Moore III

10 Thomas E. Moore III

11 Attorneys for Plaintiff and Counter-
defendant, DIGITAL IMPACT, INC.

12 DATED: December 14, 2005

13 REED SMITH LLP

14 BY /s/ Arthur M. Dresner

15 Arthur M. Dresner

16 Attorneys for Defendant and Counterclaimant
BIGFOOT INTERACTIVE, INC.

17 DATED: December 14, 2005

18 HELLER EHRLMAN LLP

19 BY /s/ L.J. Chris Martiniak

20 L.J. Chris Martiniak

21 Attorneys for Defendant and Counterclaimant,
YESMAIL, INC.

22 **ORDER**

23 **IT IS SO ORDERED.**

24 DATED: 1/3/06

25 
26 HON. SAUNDRA B. ARMSTRONG
27 UNITED STATES DISTRICT JUDGE